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Exempt from fees per Gov't code 6103
To the benefit of the City of San Diego

Attorneys for Defendants
City of San Diego and Officer Travis Hamby

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

NOLA LONG, individually, and the ESTATE OF DOMINIC LONG deceased, by his parent and successor in interest Nola Long,) Case No. 08cv641 JLS (WMC)
)
Plaintiffs,) DEFENDANT CITY OF SAN DIEGO'S
) ANSWER TO PLAINTIFFS'
) COMPLAINT
)
v.)
)
CITY OF SAN DIEGO, OFFICER TRAVIS HANBY and DOES 1 – 20,)
)
Defendants.)
)
)
)

Defendant, City of San Diego¹ and severing itself from any other party, answers Plaintiffs' Complaint for Damages, as follows:

GENERAL ALLEGATIONS

1. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of the Plaintiffs' Complaint, and therefore, denies the allegations of those paragraphs.

¹ Officer T. Hamby, erroneously named Officer Travis Hanby, has not yet been served.

2. This answering Defendant admits the allegation in paragraph 9 of Plaintiffs' Complaint that Plaintiff filed timely claims against the Defendant City of San Diego, but denies that those claims were for (all) the injuries alleged in Plaintiffs' Complaint.

FACTUAL ALLEGATIONS

3. This answering Defendant admits the allegations of paragraphs 10, 11, 12, and 13.

4. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 16 of Plaintiffs' Complaint , and, therefore, denies those allegations..

5. This answering Defendant denies the allegations contained in paragraphs 14, 15, 17, and 18 of Plaintiffs' Complaint.

FIRST CAUSE OF ACTION

**[42 U.S.C. § 1983 Constitutional Violations on behalf of the Estate
of Dominic Long, by his Parent and Successors in Interest, Nola Long]**

6. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 19 of Plaintiffs' Complaint , and, therefore, denies those allegations.

7. This answering Defendant denies the allegations of paragraphs 20, 21, 22, 23, 24, and 25 of the Plaintiffs' Complaint.

SECOND CAUSE OF ACTION

**[42 U.S.C. § 1983 Constitutional Violations
By Plaintiff Nola Long, Individually]**

8. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 26 of Plaintiffs' Complaint , and therefore, denies those allegations.

9. This answering Defendant denies the allegations of paragraphs 27, 28, and 29 of Plaintiffs' Complaint.

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THIRD CAUSE OF ACTION

**[42 U.S.C. § 1983 Constitutional Violations via
Unlawful Policies, Customs or Habit]**

10. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 30 of Plaintiffs' Complaint, and therefore, denies those allegations.

11. This answering Defendant denies the allegations of paragraphs 31, 32, and 33 of Plaintiffs' Complaint.

FOURTH CAUSE OF ACTION

**[Negligence/Wrongful Death Under California Law
by Plaintiff Nola Long Individually, and as
Successors in Interest to the Estate of Dominic Long]**

12. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 34 of Plaintiffs' Complaint, and therefore, denies those allegations.

13. This answering Defendant denies the allegations of paragraphs 35 and 36 of Plaintiffs' Complaint.

FIFTH CAUSE OF ACTION

**[Battery/Wrongful Death Under California Law
by Plaintiff Nola Long Individually, and as
Successors in Interest to the Estate of Dominic Long]**

14. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 37 of Plaintiffs' Complaint, and therefore, denies those allegations.

15. This answering Defendant denies the allegations of paragraphs 38, 39 and 40 of Plaintiffs' Complaint.

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SIXTH CAUSE OF ACTION

**[Civil Code § 52.1 Civil Rights Violations/Wrongful Death
Under California Law by Plaintiff Nola Long Individually, and as
Successors in Interest to the Estate of Dominic Long]**

16. This answering Defendant has insufficient information to admit or deny the allegations contained in paragraph 41 of Plaintiffs' Complaint, and therefore, denies those allegations.

17. This answering Defendant denies the allegations of paragraphs 42, 43, and 44 of Plaintiffs' Complaint.

AFFIRMATIVE DEFENSES

As separate, distinct and affirmative defenses to the Complaint on file herein, and to each cause of action, this answering Defendant allege as follows:

I

Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action against this answering Defendant.

II

Defendant, City of San Diego, its agents and employees, and the Defendant police officers acted in good faith and with a reasonable belief that his conduct was lawful and necessary.

III

Defendant, City of San Diego, is immune from liability in that a public entity is not liable for an injury arising out of its acts or omissions or of a public employee, in the absence of a statute declaring such liability.

IV

Defendant, City of San Diego, is not liable for an injury arising out of an act or omission of its employees, where the subject employee is immune from liability.

V

Defendant, City of San Diego, and its agents and employees are not liable for punitive damages.

VI

Defendant, City of San Diego, its agents and employees, are not liable for injuries resulting from acts or omissions which were an exercise of discretion in the absence of a statute declaring such liability.

VII

Defendant, City of San Diego, its agents and employees, are not liable while acting within the scope of their duties for injuries resulting from judicial or administrative proceedings.

VIII

Defendant, City of San Diego, its agents and employees, are not liable for the execution or enforcement of the California Penal Code where due care is exercised.

IX

Defendant, City of San Diego, its agents and employees, are not liable for violation of the plaintiffs' civil rights in that the alleged wrongful acts were not under color of any statute, ordinance, regulation, custom or usage of the City of San Diego.

X

Plaintiffs themselves were negligent in and about the matters alleged in the Complaint and said carelessness on their own part proximately contributed to the happening of the alleged incident, injuries and damages complained of, if any such exist.

XI

Defendant, City of San Diego, its agents and employees, was at all times alleged in the Complaint performing duties required by law under conditions required by law.

XII

Any and all acts of the defendant, City of San Diego, its agents and employees, and the Defendant police officers at or near the time alleged in the Complaint were reasonable and said Defendant had reasonable cause to act in the manner they did.

WHEREFORE, this answering Defendant pray judgment as follows:

1. Plaintiff take nothing by her Complaint;
2. Defendant receives their costs of suit incurred herein; and

1 3. Such other relief as the court deems proper.

2 Dated: August 28, 2008

MICHAEL J. AGUIRRE, City Attorney

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4 By /s/ Daniel F. Bamberg

5 Daniel F. Bamberg,
6 Deputy City Attorney

7 Attorneys for Defendants City of San Diego
8 and Officer Travis Hamby
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